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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,283	07/29/2003	Donald E. Weder	8403.942	5717

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/629,283

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/29/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Invention II, claims 21-40, in the reply filed on 10/20/04 is acknowledged.

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities:

Appropriate correction is required.

Paragraph [0001] should be updated to reflect the Patent status of Application 10/299,767.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 21-40** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Applicant's Section-3 disclosure; Statements As To Information Not Found In Patents Or Publications (supplied with the IDS filed 7/29/03).

Regarding **independent claims 21 and 41**:

The two independent claims appear to be merely restatements of each other, neither containing any mutually exclusive structure.

The tubular sleeve of the instant claims is encompassed by the tapered shaped plant sleeve recited in the applicant's Section-3 statements, and the methodology cited in the instant claims is also recited or inherent to the same statements, except for the bonding of the sleeve to the pot contained therein; the use of an elastic band is recited however in the said Section-3 statements.

The Examiner takes Official Notice that attachment of the sleeve to the pot contained therein is old and well-known in the art of plant sleeves, as cited in the instant claims.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the prior art sleeve(s) recited in the Applicant's Section-3 Statements, to include bonding material as cited in the instant claims, for the well-known advantages of that feature; specifically, retention of the sleeve about the pot.

Regarding dependent **claims 22, 24-27 and 34-36:**

The instant dependent claims are all directed to the disposition of a bonding material upon a sleeve surface; the Examiner does not consider the disposition of a bonding material as cited in the claims to be patentable, and further takes Official Notice that the use and placement of bonding material upon a sleeve inner surface as cited, is well-known in the art of plant sleeves.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the prior art sleeve(s) recited in the Applicant's Section-3 Statements, to include bonding material as cited in the instant claims, for the well-known advantages of that feature; specifically, retention of the sleeve about the pot.

Furthermore, it has been held that mere relocation of essential working parts of an invention requires only routine skill in the art.

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Regarding dependent **claims 23, 28, 29, 33, 37 and 38:**

The instant dependent claims are all directed to the lower end of the sleeve being either open or closed, or partially open or closed (drainage hole).

The Examiner does not consider the limitations of the instant claims to be patentable features, and furthermore, the Applicant's Section-3 statements recite open and closed sleeve bottoms to old in the art, and the Examiner considers a drainage hole in the sleeve bottom to be readable on an open bottom condition.

Regarding dependent claims **30 and 39:**

The instant dependent claims are directed to a detachable upper portion, and a removable upper sleeve portion is recited in the Applicant's Section-3 statements.

Regarding dependent claims **31 and 40:**

The instant dependent claims are directed to a sleeve skirt portion, and the recitation "leaving at least a portion of the sleeve around the pot", as recited in the Applicant's Section-3 Statements, is given a reasonable interpretation consistent with the broad claim(s) recitation of "comprises a skirt portion", to read as a skirt portion as cited.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.

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See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 21-40** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,618,991.

Although the conflicting independent claims are not identical, they are not patentably distinct from each other for the reasons disclosed by the Applicant, found on page-2, in the last sentence of the second-to-last paragraph of the Remarks Accompanying the Complete Application for Publication, filed on 7/29/03.

Instant dependent claims 22, (23,33), (24,34), (25,35), (26,36), 27, (28,37), (29,38), (30,39) and (31,40) are identical to the '991 conflicting claims 2-11 respectively.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Weder 5,111,638 teaches "pressure sensitive adhesive on at least a portion of the lower surface" of a pot covering.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Francis T. Palo*  
Francis T. Palo  
Examiner  
Art Unit 3644